



6-15-05

WM-267.00
(BXTR 27001)
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Yves Delmotte

Art Unit 1615

Serial No. 10/004,257

Filed October 26, 2001

Confirmation No. 3743

For BIOPOLYMER MEMBRANE AND METHODS FOR ITS PREPARATION

Examiner: Venkat J.

June 14, 2005

RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

TO THE COMMISSIONER FOR PATENTS,

SIR:

This letter is in response to the Office action of December 14, 2004, in which restriction of the claims of Group I (claims 1-28), Group II (claims 29-31), Group III (claims 32-37), Group IV (claims 38, and 67-72), and Group V (claims 39-40) was requested.

According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Furthermore, "[i]f the search and examination of an entire application can be made **without serious burden**, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."¹

In this case, restriction is not proper. Claims 1-28 are directed to a multilayered biocompatible structure comprising a biopolymer membrane, and a biopolymer product in contact with the biopolymer membrane, wherein the biopolymer membrane in its substantially dry form has a thickness equal to or less than about 75 microns, a solvent content less than about 5% by weight of the membrane, a radius of curvature of less than about 5 centimeters, a density greater than about 1 g/cm³, and a maximum pore size of about 20 microns. Claims 29-31 are

¹ MPEP § 803 (emphasis added).

directed to a multilayered biocompatible structure comprising a first blend of a biomaterial and thrombin defining a biopolymer membrane, a second blend of a biomaterial and thrombin defining a biopolymer product, wherein the biopolymer membrane contacts the biopolymer product and has the same characteristics as the membrane of claim 1.

Groups I and II have a prominent common element, i.e., a biopolymer membrane with the same characteristics. Moreover, both Groups were classified not only in the same class (424) but also in the same subclass (443). Therefore, any search of the prior art and examination involving the claims of Group I will necessarily co-extend with the search and examination of Group II. Similarly, claims of Group III and Group IV also belong to the same class (514) and subclass (1+). In view of this, Applicants believe that at least the examination of Groups I and II or Groups III and IV may be made without serious burden and that, therefore, claims of Groups I and II or claims of Groups III and IV should be examined together in accordance with MPEP § 803.

Subject to the foregoing traverse, Applicants hereby elect to prosecute the claims of Group I (claims 1-28) directed to a multilayered biocompatible structure.

With respect to the election of species requirement, Applicants hereby elect fibrin. Claims 1-32, 34-37, and 41-72 (of which claim 1-28 belong to Group I) read upon the elected species.

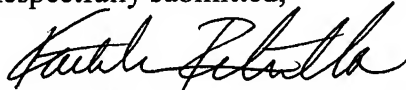
According to M.P.E.P. §809.02(c), an examiner's action subsequent to an election of species should include a complete action on the merits of all claims readable on the elected species and according to M.P.E.P. §809.02(e), whenever a generic claim is found to be allowable in substance, action on the species claims shall thereupon be given as if the generic claim were allowed. Thus, if it is determined that the elected species is patentable, it is incumbent upon the Office to search additional species that fall within any allowable generic claims.

Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

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Applicants enclose a check in the amount of \$2,160.00 for a five month extension of time. The Commissioner is hereby authorized to charge any underpayment and credit any overpayment of government fees to Deposit Account No. 19-1345.

Respectfully submitted,



Kathleen M. Petrillo, Reg. No. 35,076
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

KMP/AXS/lam

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